

SEP 14 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

LAWRENCE JOHN PIZZICHIELLO,

Defendant - Appellant.

No. 04-35297

D.C. No. CV-03-00162-DWM

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Donald W. Molloy, District Judge, Presiding

Submitted September 11, 2006**

Before: PREGERSON, T.G. NELSON, and GRABER, Circuit Judges.

Lawrence John Pizzichiello appeals pro se from the district court's order denying his 28 U.S.C. § 2255 motion challenging his conviction for robbery affecting commerce, in violation of the Hobbs Act, 18 U.S.C. § 1951(a). We have jurisdiction pursuant to 28 U.S.C. § 2253, and we affirm.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Appellant contends that the district court was without jurisdiction to enter a judgment of conviction for violating the Hobbs Act, in light of the disposition of his co-defendant's case in *United States v. Lynch*, 282 F.3d 1049 (9th Cir. 2002).

We agree with the government that because appellant failed to raise this issue on direct appeal and failed to demonstrate cause and prejudice or actual innocence, his contention is procedurally defaulted. *See United States v. Ratigan*, 351 F.3d 957, 962-64 (9th Cir. 2003).

Alternatively, even if we were to reach the merits, appellant's contention is defeated by *United States v. Lynch*, 437 F.3d 902, 910-11 (9th Cir. 2006) (per curiam) (en banc).

AFFIRMED.